

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7464 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAYANABEN BALUBHAI BHATT

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner

MR PG DESAI Ld.GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/09/98

ORAL JUDGEMENT

Draft amendment is granted.

Rule. Mr. PG Desai learned Government Pleader waives service of rule on behalf of respondent. Since the matter was heard at length, it was at the suggestion of the Court, Mr. PG Desai, Ld. GP has waived the service of rule on behalf of the respondent.

The petitioner in this petition under Article 226 of the Constitution of India, is challenging the decision of the Government removing the petitioner from the post of Additional Public Prosecutor in the City Sessions Court, Ahmedabad. In order to appreciate the grievance of the petitioner, some brief of the present case is required to be stated, which are as under:

The petitioner has enrolled as an advocate on 21.8.1980. The petitioner was appointed as Additional Public Prosecutor on 3.10.1989. The term of the petitioner was extended from time to time. On 25.9.1997 the petitioner came to be appointed as Additional Public Prosecutor for a period of three years. It appears that while performing her duties as APP, the petitioner gave consent to release the accused on bail for the alleged offence under sec. 489-A,B and C of IPC. The petitioner was called upon by the Deputy Secretary, Legal Department, by his letter dated 27.4.1998 as to why she gave consent to release the accused on bail in the said offence. It was further directed to explain the position within 10 days from the date of the receipt of the letter, failing which necessary actions shall fall. It appears that the petitioner had some medical problems and, therefore, she sought some time to file the reply. The petitioner on 15.7.1998 gave reply to the Deputy Secretary, Legal Department pointing out inter alia that reading the police papers, she found that prima-facie the offence was regarding the possession of the counter-feit currency notes and beyond that there was no evidence and, therefore, the alleged offence was only under sec. 489-C which is bailable and, therefore, she gave a consent. It is to be noted that even the learned Sessions Judge also observed in his order dated 16.2.1998 that there is no evidence with regard to the recovery of the muddamal articles from the accused and, therefore, the accused are entitled to be released on bail. The learned Sessions Judge also found that prima-facie the evidence is possession only and, therefore, the alleged offence was only under sec. 489-C a bailable offence. It appears that the explanation tendered by the petitioner was not accepted by the State and, therefore, the State Government decided to remove the petitioner as Additional Public Prosecutor and, accordingly on 5.9.1998 the impugned order was passed.

It is true that the petitioner has approached this Court on 7.9.1998, this Court while issuing notice directed the respondent not to pass any adverse order with regard to the service conditions of the petitioner. However, reading the affidavit filed by the Under

Secretary, Legal Department, it appears that the service of the petitioner came to be an end on 5.9.1998 and the Registrar of City Sessions Court, Ahmedabad was informed on fax and communicated the decision to the petitioner. Reading the affidavit of the Under Secretary, it is also clear that the impugned order is passed under Rule 5(4) of the Gujarat Law Officers (Appointment and Conditions of Service) Rules, 1965 (Hereinafter referred to as 'The Rules' for short). Rule-5(4) reads as under:

"5. Period of Appointment. - (1) All law officers shall hold office during the pleasure of the Governor.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) A law officer shall be liable to be removed from his office at any time, if he is guilty of any act of conduct which, in the opinion of the State Government is incompatible with his duties as such law officer. The decision of the State Government in such cases shall be final."

Reading the provision of Rule 5(4), it is clear that it is the right of the State Government to remove the law officer from his office at any time, if he is guilty of any act of conduct, which in the opinion of the State Government is incompatible with his duties. This Court has an occasion to consider the provisions of the said rules in the case of R.K. Shah vs. State of Gujarat, 1997(2)GLH, p. 37, wherein it is observed that before exercising the powers under sec.5(4) of the rules, the concerned law officer is required to be given an opportunity to explain about his conduct. The reasons for giving notice is necessary because the provisions of Rule 5(4) are taken into consideration, than it would be quite clear that the order in question if read by a common man, than it will lead him to believe that the present petitioner was found guilty of act or conduct which in the opinion of the State Government, is incompatible with his duties as such law officer. Therefore, when that would be a relief or understanding of the order in question, the passing of the order of cancelling the appointment of the present petitioner without giving him any opportunity to explain about his conduct and giving him any opportunity of being heard would be against the principles of natural justice. In the instant case also, there is nothing on record to show that the communication dated 27.4.1998 is under the provisions of Rule 5(4) of the rules but it merely calls upon the petitioner to explain for giving consent to enlarge the accused on bail

in the case in question. The explanation which the petitioner has given prima facie appears to be just and proper, especially when the learned Sessions Judge also found that the case against the accused wasailable and, therefore, the accused were released on bail. Merely because the petitioner has given consent on the basis of the material on record, she on the contrary assisted the court instead of vesting the time of the court in lengthy arguments. This fact by itself is not a ground for passing the order of removal and that has exactly been done in the present case, therefore, assuming that the communication dated 27.4.1998 is treated to be a notice under section 5(4), in that event also, the respondents were not justified in removing the petitioner as a Additional Public Prosecutor on that ground that she gave consent for releasing the accused on bail. Under the circumstances, I see no justifiable ground in passing the order of removing the petitioner as Additional Public Prosecutor. Mr. PG Desai learned GP invited my attention to the decision of the Apex Court in the case of State of U.P. vs. U.P. State Law Officers Association and Ors., JT 1994(1)SC p. 225, wherein the Apex Court examined the appointments of the lawyers by the Government and the public bodies and their removal in detail. Having gone through the said judgment, while accepting the principle laid down in the said judgment, I am of the view that the fact in the present case are quite distinct and independent, on the contrary, the observations made in the said judgment will be helpful to the cause of the petitioner. Mr. Desaid however, submitted that it would be the right of the Government to exercise their powers under Rule-7(A) of the Rules which have already been exercised whereby they have lost the faith and confidence in the petitioner, and, therefore, it is not obligatory on the part of the Government to assign work. Since that is not the question before me to decide, I express no opinion in the matter. However, at present, I am concerned about the legality and validity of the impugned order and in view of the discussion above, I am of the view that the respondent is not justified in removing the petitioner as Additional Public Prosecutor.

In the result, the impugned order dated 5.9.1998 is quashed and set aside and it is declared that the petitioner is continued to hold the office of Additional Public Prosecutor with effect from 6.9.1998. Rule made absolute with no order as to costs.
